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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,086	04/20/2006	Rene Burgermeister	F8975	1012
28107 7590 03/05/2009 JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168				
EXAMINER				
BADR, HAMID R				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,086

Applicant(s)

BURGERMEISTER ET AL.

Examiner

HAMID R. BADR

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date 1/26/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Objection to Abstract

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract is objected to for "said predough concentrate". The word "said" should be avoided in the abstract. Correction is required.

2. The disclosure is objected to because of the following informalities: The specification is objected to for not having Brief Description of Drawings section.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains,

or with which it is most nearly connected, to make and/or use the invention. The claim addressing the cultivation of wild yeast through a natural inoculation from ambient air is not enabling. Case law holds that applicant's specification must be "commensurately enabling [regarding the scope of the claims]" *Ex Parte Kung*, 17 USPQ2d 1545, 1547 (Bd. Pat. App. Inter. 1990). Otherwise **undue experimentation** would be involved in determining how to practice and use applicant's invention. The test for undue experimentation as to whether or not all compounds within the scope of claim 14 can be used as claimed and whether claim 14 meets the test is stated in *Ex parte Forman*, 230 USPQ 546, 547 (Bd. Pat. App. Inter. 1986) and *In re Wands*, 8 USPQ2d 1400, 1404 (Fed.Cir. 1988). Upon applying this test to claim 14, it is believed that undue experimentation **would** be required because:

(a) *The quantity of experimentation necessary* is **great** since claim 14 reads on using wild yeast in the ambient air while the specification discloses baker's yeast.

(b) There is **no direction or guidance presented** for how to use ambient air to inoculate a farinaceous dough.

(c) There is an **absence of working examples** concerning inoculating a dough with wild yeast from ambient air. .

In light of the above factors, it is seen that undue experimentation would be necessary to make and use the invention of claim 14.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3, 7-8, 14-17 and 19-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 3 recites the broad recitation 6-50 wt. % , and the claim also recites 22-39 wt. % which is the narrower statement of the range/limitation.

5. Claim 7 recites the broad recitation 120-170C , and the claim also recites 150-160C which is the narrower statement of the range/limitation.

6. Claim 8 recites the broad recitation 150-210 micron , and the claim also recites 180 micron which is the narrower statement of the range/limitation.

7. Claim 15 recites the broad recitation 4C-8C , and the claim also recites around 6C which is the narrower statement of the range/limitation.
8. Claim 16 recites the broad recitation 0C-4C , and the claim also recites 2C which is the narrower statement of the range/limitation.
9. Claim 17 recites the broad recitation 0C-4C , and the claim also recites 2C which is the narrower statement of the range/limitation.
10. Claim 14 is indefinite for "which is inoculated naturally from the ambient air". It is unclear what is meant by the phrase. It is not clear what the applicant regards as the invention.
11. Claim 17 is also indefinite for "after blending it is allowable to heat". It is not clear what is meant by the phrase . It is not clear what the applicant regards as the invention.
12. Claim 17 is indefinite for "within 72 hours said pre-dough concentrate to a paste temperature of about 0C to 4C". It is unclear whether the dough is heated for 72 hours or cooled for 72 hours.
13. Claims 19 and 20 are indefinite since they recite the broad recitation of "baked goods" and the narrow recitation of bread.
14. Claim 20 is also indefinite for the phrase "in direct dough guidance". It is not clear what is meant by this phrase. It is not clear what the applicant regards as the invention.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 1, 3, 5-7, 9, 11, 13, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Schou et al. (EP 0 152 943; hereinafter R1).

16. R1 discloses a method of making bread where the cereal flour or mixture of flours is precooked by extrusion. The extrusion is carried out at temperature range of 150-180C. A composition is made from about 40% of rye meal and about 60% of wheat bran. (Abstract).

17. R1 teaches of a method in which a mixture of wheat flour (30%) and wheat bran (70%) is extruded at 150C. After the extrusion process, the mixture is pulverized in a mill. Rye meal is then mixed with more wheat flour, water, dough conditioner (acidifying agent), baker's yeast, and approximately 3% of the mixture baked into a bread. The mixture contains 10 parts by weight of the extruded, pulverized product. (Example 2, pages 5-6).

18. Claims 1, 4, 5, 8-9, 11, 13, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Despre et al. (EP 0 948 904; hereinafter R2).

19. R2 discloses a process for preparing functional flour by hydrothermally treating the flour, drying the process flour and grinding it to obtain a functional flour. The apparatus for processing the flour is also described. (Abstract, [0011]).

20. R2 describes a method wherein corn flour is treated at 220C where 37% starch gelatinization takes place. The product is ground to a particle size of 120 micron. The thermally treated flour is then used in making a bread containing 95% flour, 5% treated flour, 65% water, 4% sugar, 3% yeast, 1% salt and calcium propionate. The dough is then baked into a bread. (Examples 1-2, pages 6-7).

21. R2 also claims a functional flour prepared by hydrothermally treating flour and drying the product at about 230C. (Claim 1, page 9).

22. R2 discloses that the product can have a particle range of 75-200 micron, in which 20-95% starch can be gelatinized. [0018, 0019].
23. R2 discloses that the pre-dough concentrate can be used at 5% (Example 2, Table 4, second row).
- 24. Claims 1, 7, 9, 11, 13, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolt et al. (US 5,433,966; hereinafter R3).**
25. R3 discloses thermally treating wheat flour at about 50-130C. The treated flour is then baked to prepare the bread. (Abstract)
26. R3 teaches how to prepare French hard rolls by treating flour at 150C and mixing it with water, yeast and salt. (Example 11 and 12).
27. R3 discloses processing wheat flour by heating it in the range of 128-255C. (Col. 5, lines 51-68).

Claim Rejections - 35 USC § 103

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
29. Claims 2, 10, 12, 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Despre et al. (EP 0 948 904; hereinafter R2) in view of Groenendaal (US 5,716,654; hereinafter R4).
30. Given that R2 discloses the a hydrothermal process in which 20-95% of starch is gelatinized, it is obvious that denaturation of gluten will take place concomitant with the

gelatinization of starch and time-temperature treatments can be optimized to obtain gluten denaturation in the range as presently claimed. The level of denaturation of gluten as presently claimed indicates that almost all of starch has been gelatinized as disclosed by R2. This level of gluten denaturation and starch gelatinization will help the dough formulation for optimum absorption of water during the formation of dough.

31. Given that R2 discloses the use of yeast in the dough, it is obvious to those of ordinary skill in the art that various types of yeast compressed yeast (about 30% dry matter) can be used. It is also obvious that the filtrate produced in the manufacture of compressed yeast can be used a leavening agent. The filtrate is known to contain yeast cells as well as nutrients for the growth of yeast cells which will help better dough fermentation.

32. Given that R2 discloses yeast as a leavening agent in the bread dough, it is obvious that the fermentation takes place in a temperature range of 25-35C and under anaerobic conditions. However, yeast is known to be a mesophilic organism and cooling the dough to temperatures below 10C as presently claimed will definitely prevent the activity of yeast in fermenting the dough. However, if fermentation is carried out at temperatures below 10C, as presently claimed, the activity of yeast will be minimal.

33. Given that yeast and flour and other ingredients are mixed into a paste or dough, it is clear that the fermentation will be a solid state fermentation as presently claimed.

34. R2 is silent regarding the used of ascorbic acid in baking.

35. R4 discloses dry yeast compositions containing ascorbic acid. (Col. 2, lines 62-64). The use of ascorbic acid in bread formulations is also well-known in the baking art.

The use of ascorbic acid will help bring about an increased loaf volume and a better crumb texture.

36. While the use of thermally treated flour is disclosed by R2 and yeast compositions containing ascorbic acid are taught by R4, it would have been obvious to one of ordinary skill in the art to prepare thermally treated flour and use in bread dough formulations containing yeast as taught by R2 and include ascorbic acid as taught by R4. Absent any evidence to contrary and based on the combined teachings of the cited references, there would be a reasonable expectation of success in producing bread using thermally treated flour.

37. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Despre et al. (EP 0 948 904; hereinafter R2) in view of Human (WO 93/06732; hereinafter R5).

38. The disclosure by R2 is hereby incorporated by reference as outlined above in paragraphs 17-20.

39. R2 is silent regarding preparing a predough and mixing the predough into the main dough.

40. R5 discloses preparing a predough by mixing water, yeast and flour and other additives and fermenting it. The predough can be stored in a cold storage or after thawing from a frozen condition before mixing it into a base dough after which the ready dough is baked. (Abstract).

41. The well-known sponge process used in the baking art, also teaches preparing a starter dough by mixing yeast, flour and water and salt and fermenting it. The prepared

starter dough can then be mixed into the base dough to prepare the final dough for baking.

42. Therefore, preparing a thermally treated flour as taught by R2 and using it to prepare a predough containing yeast as taught by R5 would have been obvious to one of ordinary skill in the art. One would do so to use a functional flour in baking bread which will affect texture and volume of the prepared bread. Absent any evidence to contrary and based on the combined teachings of the cited references, there would be a reasonable expectation of success in preparing a starter predough and using it in the main dough for preparing bread.

Conclusion

43. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. WO 02/32229A. This document discloses a method in which corn is pre-boiled and the precooked material is used in baking. DE 2837294 is a German document disclosing an extrusion process where a mixture of wheat flour, bran, yeast, water and salt is extruded. GB 2039206 discloses an extrusion process for a mixture of flour, rye, yeast and other ingredients are extruded at 50C and then baked.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-T 5:30 to 4:30 (Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R Badr
Examiner
Art Unit 1794

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1794